

## **ARKANSAS DEVELOPMENT FINANCE AUTHORITY RESOLUTION**

WHEREAS, Act 623 of 1989 of the Arkansas General Assembly (the "Act") addresses the need for affordable financing for small business enterprises in Arkansas in order to enhance the economic well-being of the citizens of the State of Arkansas; and

WHEREAS, the Legislature further declared an immediate and urgent need to provide the means and methods for providing financing and enhancing and supporting the credit of such financing to target resources of the state toward the development and expansion of, among others, minority-owned small business enterprises; and

WHEREAS, the Act requires the Arkansas Development Finance Authority (the "Authority") to promulgate rules and regulations implementing the Act and setting forth the procedures to be utilized by the Authority in providing financing or enhancing and supporting the credit of such financing; and

WHEREAS, the Act requires that such rules and regulations be promulgated by the Authority pursuant to Act 434 of 1967, the Arkansas Administrative Procedures Act (the "APA"); and

WHEREAS, the Authority finds that, the requirements for promulgation of Regulations under the APA having been fulfilled, the Regulations required by the Act are contained hereinafter and are appropriate for accomplishing the purposes of the Act as relates to the program created under the Act for which the Authority's Board of Directors approved a Resolution on January 20, 1994.

NOW, THEREFORE, BE IT RESOLVED, that the following Regulations implementing Title 15, Chapter 5, Subchapter 7 of the Arkansas Code of 1987 Annotated is hereby adopted and shall be in full force and effect from the date of this Resolution.

### **REGULATIONS IMPLEMENTING SUBCHAPTER 7 OF CHAPTER 5 OF TITLE 15 OF THE ARKANSAS CODE OF 1987 ANNOTATED- ARKANSAS DEVELOPMENT FINANCE AUTHORITY SMALL BUSINESS ACT OF 1989**

#### **Section 1: Purpose**

The purpose of these rules is to provide procedures, standards, and criteria for making loan guarantees or other forms of credit guarantees for the Disadvantaged Business Enterprise Contractor Loan Insurance Program under the Arkansas Development Finance Authority Small Business Revolving Loan Program (the "Fund.")

**Section 2:** (a) Authority for the day-to-day operation of the Fund, excluding the approval of loan guarantees or other forms of credit guarantees, is delegated by the Authority's Board of Directors, ("Authority Board") to the Vice President of Development Finance, or his/her designee.

(b) With the exception of appeals, the Small Business Loan Committee of the Authority's Board (the "Committee") is authorized to approve loan guarantees or other

forms of credit guarantees and to execute any document necessary or convenient to make effective such guarantees.

(c) The Authority's Board shall have the authority to review appeals from the Committee's decision as provided in Section 8 of this rule.

### **Section 3: Definitions**

(a) "Applicant" shall mean a financial institution.

(b) "Application" shall mean a request for a loan or other credit guarantee submitted to the Authority by a financial institution.

(c) "Authority" shall mean the Arkansas Development Finance Authority established by Act 1062 of 1985.

(d) "Board" shall mean the board of directors of the Authority.

(e) "Borrower" shall mean an eligible disadvantaged business enterprise that is seeking the loan for its own purpose in fulfilling a contract or an individual(s) who is building a single family residence for their own habitation who in turn is obtaining the services of an eligible disadvantaged business enterprise entity to build their single family residence.

(f) "Committee" shall mean the Small Business Loan Committee of the Authority Board appointed by the Authority Board to approve guarantees under this program with requirement that all such actions taken by the Committee shall be reported at the next meeting of the Board.

(g) "Eligible disadvantaged business enterprise" shall mean businesses qualified either by the Arkansas Highway and Transportation Department as a disadvantaged business enterprise and/or by the U.S. Small Business Administration as an 8(a) contractor, or such other categories as the Board may designate.

(h) "Eligible purposes" shall mean working capital necessary to secure a performance bond from a surety to complete contract work. Performance bonds shall be specific to particular contracts. In the case of homebuilders, eligible purpose means construction of a low to moderate income single family owner occupied home. Eligible purposes do not include an insured loan made primarily to pay off or refinance an existing debt to a creditor whose loan is inadequately secured or who is in danger of sustaining a loss.

(i) "Escrow Agent" shall mean a company qualified as a funds management service and approved by surety companies to administer payments on a contract in a manner to assure cost accountability.

(j) "Financial institution" shall mean a financial institution defined in ACA Title 23, Chapter 30 or institutions created under Act 567 of 1957 Arkansas General Assembly which provided for Development Finance Corporations and all subsequent amendments.

(k) "Fund" shall mean \$500,000 of unrestricted reserves of ADFA which was allocated by the Board to establish a fund to provide guarantees for loans made to Disadvantaged Business Enterprises by Resolution adopted January 20, 1994, or such other funds as may be made available for the purposes of the program.

(l) "Loan Authorization" shall mean a letter from the President or Vice-President of Development Finance or their designees to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

(m) "Loan Insurance Agreement" shall mean the agreement between the financial institution and the Authority required by Section 11 of these regulations.

(n) "Low to Moderate Income" shall mean eighty percent (80 %) to one hundred forty percent (140%) of the adjusted median household income as determined by HUD.

(o) "Pre-approved Borrower" shall mean a borrower with a firm take-out commitment for a specific amount and specific term issued by a bona fide financial institution.

(p) "State" shall mean the State of Arkansas.

(q) "Surety" shall mean a surety agent of a licensed surety company listed by the Small Business Administration as qualified to participate in the SBA Surety Bond Guarantee Program, other sureties and/or insurance agencies as may be approved by the Authority.

(r) "Working Capital Loan" shall mean any loan the proceeds of which are to be used for operating, maintenance and other costs and expenses.

#### **Section 4: Eligibility**

(a) Eligible purposes are defined in Section 3(g) above.

(b) Eligible borrowers are defined in Section 3(e) above.

(c) Eligible financial institutions are defined in Section 3(j) above.

#### **Section 5: Application Contents**

(a) Required Contents. Unless waived by the Authority, the financial institution shall submit to the Authority an application containing the following:

(1) A completed General Information Sheet form provided by the Authority.

(2) A written narrative by the lender analyzing the borrower's application (i.e., credit analysis), including an identification of the proposed amount of the loan, the requested percentage of insurance, the purpose, terms and conditions of the loan, a description of the collateral and basis for its valuation, a summary of the borrower's and business' credit standing, and a description of other sources of financing, if more than one source, for the proposed contract constituting an eligible purpose under these regulations.

(3) Complete resumes of the borrower, all partners, owners, officers and guarantors, as applicable.

(4) Historical business financial statements for the prior three years, including income statements and balance sheets (income tax returns may also be required, as applicable, if an existing business). Income tax returns may be sufficient if accountant prepared statements are unavailable. Interim financial statements must also be included if the most recent statements are beyond 90 days.

(5) Signed current personal financial statement(s) of borrower(s) with a minimum 20% ownership in the business. Federal tax returns may be required. This information may also be required of guarantors.

(6) Contract budget with supporting assumptions and a cash flow statement for the term of the contract.

(7) Evidence from surety that appropriate surety bond or builder's risk policy will be issued upon funding of loan.

(8) Other information as the Authority may require; e.g., jobs created or retained by proposed project.

(b) Supplemental Information: The Authority may require at its discretion:

(1) Where applicable, appraisals of collateral or the lender's basis for

determining collateral value.

- (2) A business or marketing plan, including an analysis of competition.
- (3) Copies of leases or purchase agreements, as applicable.
- (4) Repayment history (if financing an existing borrower).
- (5) Any other information or certification from the borrower or lender deemed by the Authority to be necessary or desirable in connection with an insured loan application.
- (6) Any other information or certifications from the borrower or lender deemed by the Authority to be necessary or desirable in connection with an insured loan application.

## **Section 6: Application Procedure**

(a) The Authority in its sole and absolute discretion shall determine when an application is complete.

(b) It shall be the responsibility of the lender to submit a complete application.

(c) The Committee shall consider the application expeditiously as possible after a complete application is received with the goal of processing applications within five business days.

(d) The Committee will review an application based on the following criteria and considerations:

(1) An application will not be approved unless the Committee determines that there is a reasonable prospect that the borrowers will repay a loan according to its terms.

(2) An application will only be approved to the extent, in terms of amount, percentage and period of insurance, that it is prudent for the Authority to provide such amount, percentage and period of insurance and that such amount, percentage and period of insurance is necessary to complete the financing.

(3) No application will be approved unless the Committee determines that the insured loan will be serviced by a financial institution as required by the Loan Agreement.

(4) No application will be approved unless the Authority determines that the borrower is eligible and the insured loan proceeds will be used in connection with an eligible purpose.

(5) No application will be approved unless the Committee determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

(6) In reviewing applications, the Committee will consider the following, as applicable:

(i) The extent to which the borrower demonstrates need for an insured loan.

(ii) The economic feasibility of the business endeavor as evidenced by the borrower's present and past financial situation and business experience and the general reasonableness of the business proposal (contract) and financial projections for the future.

(iii) Whether the borrower and any guarantors have satisfactory credit histories.

(iv) Whether the borrower has sufficient capital and other resources to complete the contract as planned, and the amount and

source of equity contributed.

(v) The adequacy of the security offered for the loan.

(vi) The extent to which the business contributes to local economic development and employment.

## **Section 7: Application Approval or Rejection**

(a) Upon approval of an application by the Committee, the President, Vice President of Development Finance, or their designees or members of the Board, a loan authorization agreement will be issued setting forth the terms and conditions upon which the loan will be insured.

(b) No loan authorization shall become effective until the lender has paid the initial insurance premium required in section 12 of these regulations. Such payment, along with an executed loan authorization, shall indicate the lender's acceptance of the loan authorization.

(c) No loan authorization shall be effective unless a loan insurance agreement as provided in Section 11 of these regulations has been executed by the lender and the Authority and remains in effect.

(d) In the event the President or Vice President of Development Finance or their designees rejects an application, they will promptly send the lender and prospective borrower a notice, including reasons for the rejection. The notice shall include a statement of the borrower's right to appeal the President's or the Vice President's of Development Finance or their designees' decision to the Authority's Board.

## **Section 8: Appeal to the Authority's Board**

(a) In the event that an application is rejected by the President or Vice President of Development Finance or their designees, the borrower shall have the right to appeal the decision to the Authority. Notice of the appeal, together with a statement of the reasons why the President or Vice President of Development Finance's or their designee's decision should be reversed or modified, shall be given to the Committee in writing within twenty calendar days after the date of the President or Vice President of Development Finance or their designees mailed notice of rejection to the financial institution. The Committee shall inform the lender of any such appeals. The appeal shall be heard at the next meeting of the Authority's Board at which there is room on the agenda, and the borrower must be present to support the appeal. The Authority's Board ordinarily meets the third Thursday of each month. The appeal shall be based on the record before the President or Vice President of Development Finance or their designees on the date of the rejection. The decision of the President or Vice President of Development Finance or their designees to reject an application shall be final unless the Authority determines that the rejection was arbitrary, capricious, or an abuse of discretion, in which event the Authority's Board may overturn or modify the decision of the President or Vice President of Development Finance or their designees and may direct the President or Vice President of Development Finance or their designees to take further action with respect to the application.

## **Section 9: Loan and Insurance Terms and Conditions**

(a) Interest rate and term. The rate of interest on the insured loan and the term of the loan shall be agreed between the lender and borrower, subject to the approval of the Authority, provided that loans are at market rate for a term of no longer than 180 days.

(b) Collateral. Repayment of an insured loan shall be secured by such collateral as the Authority deems prudent.

(1) Insured loans may, at the discretion of the Authority, be secured by collateral valued for collateral purposes at less than the amount of the insured loan, provided the borrower, its principals and any guarantors, are of good character and have good credit histories.

(2) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be located within the State. Mobile machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be registered with and taxed by the State or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored in the State when not in use.

(c) Covenants. The covenants and requirements of the loan shall be established by the lender in accordance with prudent lending practices. The Authority may require such additional covenants and requirements-as may be necessary, prudent or desirable. At a minimum, the documents should ordinarily require the borrower to:

(1) Make periodic interest payments with a balloon principal payment at receipt of final contract payment or due date of the loan.

(2) Assign progress payments to an Escrow Agent that will be responsible for payment of appropriate charges against the contract.

(3) Maintain adequate insurance on collateral, and maintain books and records on the business.

(4) Pay any taxes or governmental charges assessed against the collateral and comply with all applicable laws and regulations.

(5) Keep the collateral free of liens and encumbrances except for as may be expressly accepted by the lender and the Authority.

(6) Provide for periodic financial reports.

(7) Repay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the lender and Authority.

#### **Section 10: Loan Insurance.**

The Authority may insure up to 90 percent of a loan, with a not to exceed maximum loan insurance amount of \$50,000. Should a business which is the subject of an insured loan default or otherwise be unable to make loan payments, the Authority would pay the lender up to 90% of the deficiency. The balance of any loss is absorbed by the lender. Loan payments and the proceeds of any collateral are applied pro rata to the insured and uninsured portion of the loan. The Authority's obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest and the lender's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral up to the lesser of \$50,000 or an amount equal to the insured percentage of the original loan amount authorized in the loan authorization agreement. On a case by case basis the Authority's Board may approve bank loan guarantees in excess of the aforementioned limits.

#### **Section 11: Loan Insurance Agreement**

No loan authorization shall be effective unless the lender and the Authority have executed a loan insurance agreement in a form acceptable to the Authority setting forth

the relative rights and responsibilities of the lender and the Authority for all insured loans. The loan insurance agreement shall include without limitation the following:

(a) General conditions and provisions incorporating the requirements of this division of the rules and the Small Business Act of 1989;

(b) Provisions setting forth the responsibilities of the lender to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan without relying on loan insurance;

(c) A requirement that the lender notify the Authority in writing within 5 business days after knowledge of a default. Upon default, the lender and/or Authority shall take such action as may be prudent, including without limitation repossessing and liquidating or foreclosing on collateral;

(d) A description of the Authority's insurance programs and the method for paying insurance claims.

## **Section 12: Insurance Premiums**

The Authority shall charge a one-time, up-front insurance premium. Premiums are due at the time lender originates a loan and executes a loan authorization with the Authority. The Authority's insurance is not effective until premiums are paid. It is expected that lender will pass along the cost of premiums to borrowers. Premiums shall be determined at the time the Committee approves the application, but in no event is the premium to exceed 2% per annum on an annualized basis.

## **Section 13: Administrative Costs of the Program**

The Authority may charge the Fund actual and necessary administrative expenses in operating the insurance program.

## **Section 14: Confidential Records**

(a) The President or his designee shall provide nonexempt program records for inspection in accordance with ACA Chapter 25, Section 19.

(b) The person requesting inspection of the records may be charged a reasonable fee for copying and mailing the records.

(c) Except as otherwise provided in ACA Chapter 25, Section 19, records exempt from disclosure include files which, if disclosed, would give advantage to competitors or bidders, but are not limited to:

(1) Reports and analyses of reports obtained in confidence from creditors, employers, customers, suppliers, and others which bear on the applicant's character, finances, management ability, and reliability and which were obtained from persons or firms not required by law to submit them.

(2) Financial statements, tax returns, business records, employment history and other personal data submitted by or for applicants, or analysis of such data.

(3) Consumer lists.

(4) Production, sales or cost data.

(5) Marketing strategy information that relates to a borrower's plan to address specific markets and borrower's strategy regarding specific competitors.

## **Section 15: Amendment of Regulations**

These Regulations may be amended from time to time by Resolution of the Board of the Authority in accordance with the requirements of the APA.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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**Art Morris, Chair**

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**Mac Dodson, President**